

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.29100 of 1998

ORAL ORDER:

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This writ petition is filed seeking a Mandamus declaring the action of the respondents in treating petitioner's service from 1.7.1995 to 30.6.1996 as re-employment, deducting amount of Rs.6,854/- from his gratuity as excess salary paid to him during 1.7.1995 to 30.6.1996 and not counting and excluding petitioner's service from 1.7.1995 to 30.6.1996 as arbitrary and illegal and consequently direct the respondents to fix the retiral benefits of the petitioner by including his service from 1.7.1995 to 30.6.1996 and refund the amount of Rs.6,854/- which was deducted illegally.

It appears, petitioner joined as Sarangi in the Respondent-Electricity Board in the year 1960 and at the time of joining, his date of birth was recorded as 16.6.1938 and he was due to retire with effect from 30.6.1996. This fact was recorded in the proceedings dated 30.1.1996 issued by the respondents and the same was also communicated to the petitioner. Thereafter, vide proceedings dated 18.2.1998, the service rendered by the petitioner beyond the age of superannuation i.e. from 1.7.1995 F.N. to 30.6.1996 A.N. was treated as re-employment and fixed his pay as per B.P.Ms.No.302 dated 13.1.1998. Thus, the petitioner's pension was fixed as if he had retired from service with effect from 1.7.1995. Hence the writ petition.

The case of the petitioner is that as per the orders of the respondents dated 30.1.1996, he is due to retire with effect from 30.6.1996, but he was made to retire w.e.f. 30.6.1995 treating his date of birth as 1.7.1939. The grievance of the petitioner is that no notice of any kind has been issued to him before passing the impugned

proceedings dated 18.2.1998 treating the service rendered by him from 1.7.1995 to 30.6.1996 as re-employment and further deducting an amount of Rs.6,854/- as excess payment.

The respondents neither filed any counter nor placed any material to show that the date of birth of the petitioner was altered, or the date of birth noted in the service register was incorrect one. No material has been placed before this Court showing the date of birth of the petitioner as 16.6.1939 and he is due to retire w.e.f. 30.6.1995. Only after the retirement of the petitioner, respondents vide impugned proceedings dated 18.2.1998 have decided that the petitioner is due to retire w.e.f. 30.6.1995 and fixed his pensionary benefits as if he is retired w.e.f. 30.6.1995 and also sought to recover Rs.6,854/- towards excess wages paid from 1.7.1995 to 30.6.1996.

Heard both sides.

The impugned proceedings dated 18.2.1998 directing the Superintending Engineer, Operation Circle to treat the period from 1.7.1995 to 30.6.1996 as re-employment does not refer to any reason, whereas proceedings dated 30.1.1996 clearly indicate the date of birth as well the date of retirement of the petitioner. Thus, there is no reason to treat the period from 1.7.1995 to 30.6.1996 as re-employment. The respondents having allowed the petitioner to work till 30.6.1996 and having retired him w.e.f. 30.6.1996, cannot treat the period from 1.7.1995 to 30.6.1996 as re-employment and fix his pay to that effect. Moreover, no notice or opportunity of any kind has been given to the petitioner before passing the impugned proceedings dated 18.2.1998. Thus, the action of the respondents in not treating the period of service rendered by the petitioner from 1.7.1995 to 30.6.1996 as in service and not fixing the retiral benefits by including the said period and further ordering recovery of an amount of Rs.6,854/- towards excess amount

paid against gratuity is arbitrary and illegal.

In the result, the writ petition is allowed, the impugned order is set aside and the respondents are directed to treat that the petitioner had retired from service on attaining the age of superannuation w.e.f. 30.6.1996. Further, he is entitled for all the retiral and other consequential benefits as if he retired w.e.f. 30.6.1996. No order as to costs.

C.V.RAMULU,
J

Date: 3.10.2007

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W.P.No.29100 of 1998

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**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.29100 of 1998

Date: 3rd October, 2007

Between:

T.Satyam

.. Petitioner

And

A.P.S.E.B., rep. by its Secretary,
Vidyut Soudha, Hyderabad & others.

.. Respondents